

J9OKZHAC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 YU ZHANG, on his own behalf  
4 and on behalf of others  
similarly situated,

5 Plaintiff,

6 v.

18 CV 12332 (AJN) (OTW)

7 SABRINA USA INC., et al.,

8 Defendants.  
9 -----x

New York, N.Y.  
September 24, 2019  
11:27 a.m.

10  
11 Before:

12 HON. ONA T. WANG,

13 Magistrate Judge

14 APPEARANCES

15 TROY LAW PLLC  
16 Attorneys for Plaintiff  
17 BY: AARON B. SCHWEITZER

18 LAW OFFICE OF Z. TAN PLLC  
Attorneys for Defendants  
19 BY: BINGCHEN LI

20 ALSO PRESENT:

21 ARTHUR KWOK, Mandarin Interpreter  
22  
23  
24  
25

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(Case called)

MR. SCHWEITZER: Good morning, your Honor. Aaron Schweitzer, for the plaintiff, Mr. Zhang.

THE COURT: Okay. Also with you at counsel table are?

MR. SCHWEITZER: Mr. Zhang himself, two to my right, and the interpreter, Arthur Kwok.

THE COURT: Okay.

I'm sorry, what's the interpreter's name again?

THE INTERPRETER: Yes, Judge. Arthur Kwok, K-w-o-k.

THE COURT: Okay.

All right.

MR. LI: Good morning, your Honor. Bingchen Li, appearing for defendants. And standing next to me is the individual defendant, Ai Lan Chen, also known as Karen Chen.

THE COURT: Please be seated.

I understand we have a number of witnesses here. I guess my question is: Do all of the witnesses understand and speak English? I understand Mr. Kwok is here translating for Mr. Zhang, but is there any other need for any translation or interpretation?

MR. LI: Yes, actually. I engaged with Mr. Kwok as well, so he is going to do double duties today. While Mr. Zhang is testifying, and he is going to translate for him --

THE COURT: If that's going on, I need all of the

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1 translation to be provided to all of the witnesses here.

2 Now, is that going to be a problem, since your  
3 witnesses are sitting in the back of the courtroom?

4 MR. LI: So, as your Honor is saying that, the  
5 witnesses will not be excluded from this entire hearing?

6 THE COURT: No.

7 MR. LI: Okay.

8 So I think they will be here, and I will be able to  
9 translate to them.

10 THE COURT: No, I'd like to have one translator or one  
11 interpreter, so we understand that all of this is consistent.  
12 I have a concern when attorneys are translating, because how  
13 are you going to translate what you are saying when you're  
14 arguing in English?

15 MR. LI: Okay. Then can I make a suggestion that  
16 whatever is spoken here in the court, we can ask Arthur speak  
17 aloud and to the interpretation. That way, so everybody can  
18 hear him.

19 THE COURT: Is that okay with you, Mr. Schweitzer?

20 MR. SCHWEITZER: It is. I was going to suggest  
21 possibly getting headsets from the interpretation office, but  
22 that might take a while.

23 THE COURT: Right.

24 Maybe what we can do, Mr. Li, is have your witnesses  
25 come and sit maybe right behind you?

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1 MR. LI: Okay.

2 THE COURT: And then maybe have Mr. Kwok sit between  
3 everybody, so that the witnesses who do not understand English  
4 can hear him, and he doesn't have to raise his voice too much.

5 MR. LI: Okay.

6 THE COURT: Wait. What's the problem here?

7 MR. SCHWEITZER: Mr. Zhang is going to sit with the  
8 other witnesses, so he is closer to them.

9 THE COURT: Okay.

10 MR. LI: So when he interpreted, everybody can hear  
11 him.

12 THE COURT: Okay. Is that going to work, or should  
13 Mr. Kwok sit behind, so he can speak forward?

14 THE INTERPRETER: Okay. That's even better.

15 THE COURT: Does that work?

16 Why don't you switch seats with somebody who is  
17 sitting in the back there.

18 MR. LI: All right.

19 THE COURT: All right.

20 I am going to poll each of the Chinese-speaking  
21 witnesses in turn. Okay?

22 So, Mr. Zhang, the plaintiff, can you understand and  
23 hear what Mr. Kwok is saying to you?

24 MR. ZHANG: Yes, I'm able to hear clearly.

25 THE COURT: Okay.

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1 Mr. Zheng, can you hear and understand what the  
2 interpreter is saying to you?

3 MR. ZHENG: Yes.

4 THE COURT: Ms. Yap, can you hear and understand what  
5 the interpreter is saying to you?

6 MS. YAP: Yes.

7 THE COURT: And, Mr. Wong, can you hear and understand  
8 everything the interpreter is saying to you?

9 MR. WONG: Yes.

10 THE COURT: Thank you.

11 Mr. Kwok, you're going to be doing a lot of talking  
12 today.

13 THE INTERPRETER: Thank you.

14 THE COURT: So we are here for an evidentiary hearing  
15 on plaintiff's motion for conditional collective certification,  
16 right, Mr. Schweitzer?

17 MR. SCHWEITZER: Yes, your Honor.

18 THE COURT: Okay.

19 So, I see here we have a situation, as we did with a  
20 different case where you were before me, where you have  
21 competing declarations. So, since it's your motion, I will  
22 leave it up to you if you want to start with a factual summary  
23 or if you'd like to just start calling witnesses. It's up to  
24 you.

25 MR. SCHWEITZER: Yes. Briefly, your Honor, Mr. Zhang

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1 has described his working conditions at Yumi Sabrina  
2 restaurant. He has described his job, he's described his  
3 hours, he's described how he was paid, how he was fired, who  
4 fired him. He has described several of his coworkers, their  
5 rates of pay and their schedules.

6 The declarations and witnesses that have been brought  
7 against him, for the most part, don't actually contradict what  
8 he stated in his affidavit in support of conditional  
9 certification. They do purport to say that he did not, in  
10 fact, work at Yumi Sabrina, which we will show today is not  
11 true.

12 THE COURT: Okay.

13 All right. So --

14 MR. SCHWEITZER: I'll begin with Mr. Zhang.

15 THE COURT: Okay.

16 Mr. Zhang, come on up and take the stand.

17 I'll ask my law clerk to swear in Mr. Zhang.

18 YU ZHANG,

19 called as a witness by the Plaintiff,  
20 having been duly sworn, testified through the  
21 Mandarin interpreter as follows:

22 THE COURT: Go ahead, Mr. Schweitzer.

23 MR. SCHWEITZER: Your Honor, may I move to the podium?

24 THE COURT: Sure, you may, but you don't have to.  
25

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Zhang - Direct

1 DIRECT EXAMINATION

2 BY MR. SCHWEITZER:

3 Q. Mr. Zhang, are you familiar with a restaurant called Yumi  
4 or Yumi Sabrina?

5 A. Yes, I heard of it.

6 Q. How are you familiar with that restaurant?

7 A. Because I used to work there.

8 Q. When did you start working there?

9 A. I think, possibly, May 25th or 26th of 2016.

10 Q. When did you stop working there?

11 A. June 25th or the 26th.

12 Q. Of what year?

13 A. 2016, one-six.

14 Q. What was your job at Yumi Sabrina?

15 A. I work as a busboy.

16 Q. What tasks did that entail?

17 A. Mop the floor, clean the table, set the table -- set the  
18 table.

19 Q. What cuisine did Yumi Sabrina serve?

20 A. Hibachi. Hibachi. Mostly hibachi table.

21 Q. Can you just explain what hibachi is?

22 A. It's a big table where you can stir fry on top of it.

23 Q. Okay. Were there some tables that were set up for hibachi  
24 and some ordinary tables?

25 MR. LI: Objection. It's leading. It's his witness.

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Zhang - Direct

1 THE COURT: Can you describe the tables in the  
2 restaurant, please?

3 THE WITNESS: You got regular tables restaurant  
4 usually have and then the hibachi tables.

5 BY MR. SCHWEITZER:

6 Q. How many of each?

7 A. Seven big hibachi tables, about ten to twenty regular  
8 dining tables.

9 Q. Did your job differ -- withdrawn.

10 How, if at all, did your job differ with respect to  
11 the hibachi tables and the regular tables?

12 A. Basically, I cleaned the table, I gather all the refuse  
13 from the table, and then cleaned it, and then set the table  
14 again.

15 Q. Can you describe the entrance to the restaurant of Yumi  
16 Sabrina?

17 A. The front door is a one-sided door, glass door, that you  
18 pull, and then there's a glass panel on the right side.

19 Q. Did you wear a uniform to work?

20 A. I do.

21 Q. Where would you change from your street clothes into the  
22 uniform?

23 A. Inside the bathroom.

24 Q. Can you describe the bathroom?

25 A. It's got a toilet, urinal, and wash basin inside the



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Zhang - Direct

1 bathroom.

2 Q. About how large was it?

3 A. Approximately six to seven square meters, approximately.

4 THE COURT: Can you describe the layout of the  
5 bathroom?

6 THE WITNESS: I think once you get in, on the right  
7 side is a -- once you enter the bathroom, on the left-hand  
8 side, I believe -- not the right-hand side, left-hand side --  
9 is the wash basin and a mirror.

10 THE COURT: Where is the toilet located?

11 THE WITNESS: On the right-hand side. On the  
12 right-hand side.

13 THE COURT: Is there a paper towel dispenser?

14 THE WITNESS: I don't remember.

15 THE COURT: Is there a hand dryer?

16 THE WITNESS: Maybe, yes. I don't remember exactly.

17 BY MR. SCHWEITZER:

18 Q. Where was the restaurant located?

19 THE COURT: Wait, I have one more question.

20 MR. SCHWEITZER: Sorry, your Honor.

21 THE COURT: Is there anything else you can remember  
22 about the bathroom - what color it is, where the lights are,  
23 anything else?

24 THE WITNESS: The light is rather yellowish light,  
25 something similar to what's here.

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Zhang - Direct

1 THE COURT: Is the light fixture on the wall, or  
2 hanging down from the ceiling, or something else?

3 THE WITNESS: I don't recall.

4 BY MR. SCHWEITZER:

5 Q. What happened to your uniform when you weren't wearing it?

6 A. I would leave it in this drawer that's in between two  
7 hibachi tables that's against a wall. And it's located on the  
8 left side of the entrance after you go in.

9 Q. When you were storing your uniform, did you see any other  
10 uniforms being stored?

11 A. Yes.

12 Q. And how were they stored?

13 A. Also store in the same location, folded.

14 Q. What did your uniform look like?

15 A. It's a black T-shirt with the Chinese character or the  
16 character of Buddha printed on the back. Buddha.

17 Q. Did you see other restaurant workers at Yumi Sabrina  
18 wearing uniforms?

19 A. Yes. The waiters also, they wear the same clothing, that  
20 clothing.

21 Q. Besides the waiters and yourself, did you observe any other  
22 workers at Yumi Sabrina wearing uniforms?

23 A. The hibachi chefs wear different types of uniforms.

24 Q. Can you describe them?

25 A. Well, they wear chef's hat around it, also kind of like

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Zhang - Direct

1 that, and the color of the hat is the same color as their  
2 apron.

3 Q. When you say "apron," I noticed you were gesturing towards  
4 your neck. Can you describe that garment more fully?

5 A. Oh, I meant -- not apron, sorry. I meant like a  
6 handkerchief, a small handkerchief.

7 Q. Do you recognize the lady in the dark blue seated at the  
8 defense table?

9 A. I do.

10 Q. Who do you recognize her to be?

11 A. She is the boss.

12 Q. When was the last time you saw her?

13 A. Last time at his attorney's office.

14 Q. At whose attorney's office?

15 THE INTERPRETER: At her attorney's office, sorry.

16 MR. SCHWEITZER: Thank you. I'll caution the  
17 interpreter to be careful about pronouns. They can be  
18 confusing. Thank you. Excuse me.

19 BY MR. SCHWEITZER:

20 Q. When was the last time you saw her before then?

21 A. Prior to that was back in 2016, when I left the restaurant.

22 Q. What happened at that time?

23 A. She fired me.

24 Q. Did she give a reason for firing you?

25 A. No. She fired me without reason.

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Zhang - Direct

1 Q. Who else, if anyone, was present with the two of you when  
2 you were fired?

3 A. At that time, just me and the boss, boss lady.

4 Q. Where were you and she located when she fired you?

5 A. By the cashier, the cash register.

6 Q. The cash register in the restaurant?

7 A. Yes.

8 Q. Where is that in relation to the front entrance?

9 A. Well, once you enter, on the right-hand side is the bar --  
10 table or bar, and then next to that is a Buddha statue. And  
11 then next to the Buddha statue is the cash register.

12 Q. I see.

13 Do you recognize the lady in the pink blouse?

14 A. She was a waitstaff there, or waiter. Waiter/waitress,  
15 waitstaff there.

16 Q. Was she a waitperson the entirety of your employment, or  
17 did she come in sometime after you did?

18 A. Yes, yes, she was always there.

19 Q. Do you know her name?

20 A. I forgot her name. I don't remember.

21 Q. While you were working in the restaurant, did you address  
22 your coworkers by name or some other way?

23 A. I don't understand.

24 Q. If you needed to speak to somebody, how would you address  
25 them?

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Zhang - Direct

1 A. For people older than me, I call them Shifu, meaning master  
2 or teacher.

3 Q. And for people younger than you?

4 A. Mr. or Ms.

5 Q. How did your coworkers address you if they needed to get  
6 your attention?

7 A. Generally, they call me York.

8 Q. Can you spell that?

9 A. Y-o-r-k.

10 Q. And why was that?

11 A. That's the English name I gave myself.

12 Q. I see.

13 Did you give out your Chinese name?

14 A. Correct, that's right. I don't use it anymore during work.

15 Q. Was that common at the restaurant, for people to address  
16 each other by their English names or by a title rather than  
17 their full name?

18 A. Yes.

19 Q. How would you address your boss?

20 A. For -- I call my boss "Boss" directly, "Boss," because  
21 everybody spoke Chinese anyway.

22 Q. How often was the boss present in the restaurant?

23 A. Every day. The boss? Every day.

24 Q. About what time of day did she arrive and what time did she  
25 leave?

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Zhang - Direct

1 A. Generally arrive together with the same vehicle.

2 Q. When you say "the same vehicle," what are you saying?

3 A. That would be a 15 van -- 15-seater van. Sometimes the  
4 boss comes after 5:00 p.m., when she drives herself.

5 Q. How often would she drive herself and how often would she  
6 travel by van?

7 A. When the van is full, then she will drive herself.

8 Q. And about how often was that?

9 A. Generally, that happens on the weekend.

10 Q. I see.

11 Did -- the waitress we were discussing earlier, did  
12 she take the van?

13 A. Yes, yes.

14 Q. Do you recognize the gentleman in the white sweatshirt  
15 almost directly behind me?

16 A. I do, I do.

17 Q. Who do you recognize him to be?

18 A. He's the driver. He's the driver that drives the commuter  
19 van that I described before -- I mean the van that I described  
20 before. He also is responsible for the entire affair of the  
21 kitchen.

22 Q. What do you mean by "responsible for the entire affair of  
23 the kitchen"?

24 A. Meaning he is in charge of all the people, personnel, in  
25 the kitchen.

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Zhang - Direct

1 Q. What tasks does he do from day to day?

2 A. He's responsible for organizing and doing everything in the  
3 kitchen, ordering people to do this and that.

4 Q. What name or title did you know him by when you were  
5 working at Yumi Sabrina?

6 A. He is the big man of the kitchen.

7 Q. Did you and he interact while you were working at Yumi  
8 Sabrina?

9 A. Yes.

10 Q. What did those interactions consist of?

11 A. He would instruct me to do various jobs, various tasks.

12 Q. Like what?

13 A. Mop the floor, for example, or perhaps bring various items  
14 to the hibachi table.

15 Q. Was the big man in the kitchen already employed or working  
16 at Yumi Sabrina when you started working there?

17 A. Yes.

18 Q. Do you happen to know the big man in the kitchen's name?

19 A. Possibly Chen or Zheng. I'm not exactly sure.

20 Q. Why do you think that's his name?

21 A. I overheard people calling him in the kitchen Xiao Chen or  
22 Xiao Zheng.

23 Q. What do those phrases mean, if anything?

24 Let's put it this way: What does Xiao mean in that  
25 context?

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Zhang - Direct

1 A. It relates to somebody who is under 60. I think that's all  
2 it means.

3 Q. Do you recognize the gentleman in the white button-down  
4 shirt sitting in the gallery?

5 A. You mean the one wearing glasses?

6 Q. Yes.

7 A. Yes. He's the manager.

8 Q. When was the last time you saw him?

9 A. Also at the office of the opposing counsel.

10 Q. What, if anything, did he say to you or did you say to him  
11 at that time?

12 A. Not much. He claim he doesn't know me.

13 Q. You said you recognize him to be the manager. What would  
14 he do at Yumi Sabrina?

15 A. He would be at the bar table sometimes, answer the phone  
16 sometimes. He manages the waitstaff and the busboys.

17 Q. He was your immediate supervisor?

18 A. Yes, yes.

19 Q. Did you interact with him at Yumi Sabrina?

20 A. Yes.

21 Q. What did those interactions consist of?

22 A. Mop the floor, clean the table, set the table.

23 Q. How did he address you?

24 A. York.

25 Q. How did you address him?



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Zhang - Direct

1 A. Alex.

2 Q. Do you know his Chinese name?

3 A. Yes. Wong, but not the rest of the name.

4 Q. Is Wong his personal name, his family name?

5 A. Last name.

6 Q. Where were you living at the time you were working at Yumi  
7 Sabrina?

8 A. Flushing.

9 Q. You mentioned that you took a van to get from there to Yumi  
10 Sabrina?

11 A. Yes.

12 Q. Where was the pickup and drop-off point in Flushing?

13 A. In front of a bakery, QQ, located, I believe, at 4257 Main  
14 Street.

15 Q. Okay. And where was Yumi Sabrina located?

16 A. Bowham? I think at a town called Bowham. Bowham Parkway.  
17 802.

18 Q. Can you spell what you said is Bowham?

19 A. I'm not sure I can spell it. I don't know how to spell it.

20 Q. Is it possible that's Pelham, P-e-l-h-a-m?

21 A. Pelham, yes, correct.

22 Q. When would you get picked up by the van?

23 A. 10:20, I think.

24 Q. Who else, if anyone, would be picked up at 10:20 at the  
25 bakery in Flushing?

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Zhang - Direct

1 A. Kitchen staff, waitstaff, as well as Mexican kitchen  
2 helpers.

3 Q. You mentioned that the gentleman in the T-shirt drove the  
4 van and that the waitress in the pink blouse rode the van. Did  
5 anybody else present here today ride the van?

6 A. Sometimes the boss lady would be sitting at the passenger's  
7 seat next to the driver.

8 Q. Right.

9 Did the van make any stops between the bakery in  
10 Flushing and the restaurant in Pelham?

11 A. No. Direct arrival at the restaurant.

12 Q. When you boarded the van in Flushing, was there anybody  
13 besides the driver and occasionally the boss in it?

14 A. Yes. The manager. The manager will be there.

15 Q. When did your workday start at Yumi Sabrina?

16 A. 11:00. Based on what I can remember, at that time, 11:00.

17 Q. When did your workday end?

18 A. Monday through Friday ends at 10:00; Friday/Saturday ends  
19 at 11:00; Sunday ends at 10:00, also.

20 Q. When did the workday of the other people who rode the van  
21 begin?

22 A. To a van -- can you repeat the question?

23 Q. When did the workdays of the other people who rode the van  
24 begin, at what time?

25 A. The same thing. The same thing.

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Zhang - Direct

1 Q. When did their workdays end?

2 A. Also the same.

3 Q. And how do you know that?

4 A. Because we take the same return van ride. We take the same  
5 ride back.

6 Q. I see.

7 Did Yumi Sabrina have a time clock or other time  
8 recording system?

9 A. Not when I was there. Not that period of time.

10 Q. What was your rate of pay at Yumi Sabrina?

11 A. Pay rate? Well, 25 per day.

12 Q. 25 what? Dollars, cents?

13 A. 25 USD.

14 Q. Okay. How often did you receive your pay?

15 A. Two weeks, every two weeks.

16 Q. Did you receive your pay in check, in cash, a combination  
17 of both, some other way?

18 A. Cash.

19 THE COURT: Mr. Schweitzer, we're here on a motion for  
20 collective conditional cert, right, and we have competing  
21 affidavits of declaration. So can we please try to stick to  
22 the motion rather than adducing all of the testimony that you  
23 might want to introduce at trial?

24 MR. SCHWEITZER: I'm getting there, your Honor.

25 THE COURT: Okay. Thank you.

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Zhang - Direct

1 MR. SCHWEITZER: Thank you.

2 BY MR. SCHWEITZER:

3 Q. Who gave you your pay?

4 A. The person sitting at the defense table, the boss.

5 Q. Did you observe other employees getting paid?

6 A. Yes.

7 Q. What did you observe?

8 A. The boss handing them an envelope.

9 Q. Did you see what was in the envelope?

10 A. No, not able to see.

11 Q. Have you spoken with other employees about how much they  
12 were paid?

13 A. No, no.

14 Q. Are you familiar with two stir fry -- are you familiar with  
15 the stir fry cooks in the kitchen?

16 A. Not terribly familiar.

17 Q. What do you know of them?

18 A. We spoken, and I asked them about pay.

19 Q. What did you ask them?

20 A. I asked their income.

21 Q. And how did they respond, if at all?

22 A. They said it's secret, disallowed by the boss.

23 Q. What knowledge do you have regarding how much they were  
24 paid?

25 MR. LI: Objection. I don't know where this -- the

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Zhang - Direct

1 basis or the foundation for this question.

2 MR. SCHWEITZER: If it's none, it's none.

3 MR. LI: But it's leading by itself.

4 THE COURT: It is leading, and there's been a line of  
5 leading questions. I'll let this question go on, but let's try  
6 to move it along, okay?

7 BY MR. SCHWEITZER:

8 Q. What knowledge, if any, do you have regarding these stir  
9 fry cooks' pay?

10 A. Meaning how much were their pay; is that right?

11 Q. If you know.

12 A. Possibly around 3200.

13 Q. Why do you say that?

14 A. Because one day, after work or after I got out of the van,  
15 I asked one of the stir fry cooks.

16 Q. And what did he say?

17 A. He said 3200, 3200, but he said, please don't tell anybody  
18 else.

19 Q. What unit time does that 3200 refer to? Is that per day,  
20 per week, per month, per year?

21 THE COURT: If you know.

22 THE WITNESS: Per month.

23 BY MR. SCHWEITZER:

24 Q. Are you familiar with an oil fryer?

25 A. 2500 per month.

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Zhang - Direct

1 Q. And how do you know that?

2 A. At the time, I heard it from one of the stir fry cooks.

3 Q. That is the stir fry cook was talking about what the oil  
4 cook was making?

5 A. Yes, yes, yes, approximation. He said approximately.

6 Q. Under what circumstances was he saying that?

7 A. After getting out of the van, when there was no one else  
8 around, just of two of us.

9 Q. I see.

10 How much were the waitstaff paid, if you know?

11 A. I don't. Actually, I don't.

12 Q. How much were the hibachi chefs paid, if you know?

13 THE INTERPRETER: Hibachi chef, right?

14 MR. SCHWEITZER: Yes.

15 A. I don't know.

16 Q. Was there a tip pool at Yumi Sabrina?

17 A. Yes.

18 Q. Who shared in the tip pool?

19 A. Manager.

20 THE COURT: What do you mean by that?

21 THE WITNESS: The manager collects the tips, gather  
22 the tips.

23 BY MR. SCHWEITZER:

24 Q. What happens to the tips after they're gathered?

25 A. After that, he would order or ask one of the waitstaff to

J9OKZHAC

Zhang - Cross

1 distribute it.

2 Q. And to whom are the tips distributed?

3 A. The waitstaff, myself, even the boss gets a portion.

4 Q. Did the stir fry cooks we talked about earlier, did they  
5 take the van?

6 A. They do, yes.

7 Q. Did the oil cook that we talked about earlier take the van?

8 A. Yes.

9 MR. SCHWEITZER: Nothing further.

10 THE COURT: Any cross?

11 MR. LI: Yes. There are a lot of things which it's  
12 very unclear to me.

13 CROSS-EXAMINATION

14 BY MR. LI:

15 Q. Mr. Zhang, remember that we had a deposition sometime in  
16 June of this year? Do you remember that?

17 A. Yes, yes.

18 Q. Have you been back to the restaurant since that deposition?

19 A. No.

20 Q. Have you tried to search the restaurant on the Internet  
21 since that deposition?

22 A. No.

23 Q. Since that deposition, have you reviewed any documents  
24 related to this case?

25 A. No.

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Zhang - Cross

1 Q. Are you sure that you didn't review any documents since the  
2 deposition in June?

3 MR. SCHWEITZER: Asked and answered. Badgering.

4 THE COURT: It's one question. I'll allow it.

5 THE WITNESS: I'm certain I did not.

6 THE COURT: Okay. I have a question. Mr. Zhang,  
7 what, if anything, did you do to prepare for this evidentiary  
8 hearing today? Don't tell me what your attorney said to you,  
9 but you can tell me if you met with or spoke with your  
10 attorney.

11 THE WITNESS: Yes, I met with my attorney. However, I  
12 did not do any preparation, nor did I read any documents for  
13 preparation. And we did come together this morning by subway.

14 THE COURT: About how many times have you met with  
15 your attorney since your deposition in June?

16 THE WITNESS: None, zero, not once. Except this  
17 morning, we came together.

18 THE COURT: And all you did in preparation was that  
19 you had a conversation with your attorney?

20 THE WITNESS: We didn't even -- we did not even have  
21 any discussion since I cannot actually communicate with him.  
22 He speaks English, and I speak Chinese.

23 THE COURT: So, how did you find out that you needed  
24 to be here today?

25 THE WITNESS: The workers at the attorneys' office



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Zhang - Cross

1 notified me, called me.

2 THE COURT: And what did they tell you?

3 THE WITNESS: He or she said to me you got to be at  
4 court on Tuesday at 11:00 for testimony, to testify.

5 THE COURT: Was this only one phone conversation that  
6 you had about this court conference?

7 THE WITNESS: Correct, yes.

8 THE COURT: All right. Tell me everything you  
9 remember about that phone conversation.

10 THE WITNESS: Tuesday at 11:00, you got to go to this  
11 address to testify at court, at this court.

12 THE COURT: Okay. Go ahead.

13 MR. LI: Okay.

14 BY MR. LI:

15 Q. So earlier on, you testified that you took the subway  
16 together with counsel to this court; is that right?

17 A. Yes.

18 Q. So, you also testified the only conversation you have had  
19 with this law office was when someone in the law office called  
20 you to give you the address and the time of today's hearing; is  
21 that right?

22 A. Yes.

23 Q. Then how did you know that you had to meet up with your  
24 attorney beforehand and took the subway together?

25 A. I said something about going alone, and then the worker

J9OKZHAC

Zhang - Cross

1 from the office says that, go with the attorney and wait at the  
2 subway stop, subway entrance.

3 Q. So, earlier you testified that you didn't review any  
4 documents, and you didn't met with your counsel since the  
5 deposition prior to today's hearing; is that right?

6 A. Correct.

7 Q. I gather that you -- during that time, you didn't go to  
8 your attorneys' office; is that right?

9 A. I didn't go.

10 MR. LI: I would like to introduce Defendants'  
11 Exhibit 1 for this hearing. That's an affidavit purportedly  
12 signed and notarized -- signed by this witness and then  
13 notarized by John Troy, the counsel for this case, which is  
14 also filed as document 30-4, as part of this conditional  
15 collective certification motion.

16 THE COURT: Okay. I don't think you need to introduce  
17 it as an exhibit because it's already filed on the docket.

18 MR. LI: Okay.

19 THE COURT: So I can take judicial notice of it.

20 MR. LI: All right.

21 THE COURT: And I have it here.

22 MR. LI: So should I approach the witness and give him  
23 a copy?

24 THE COURT: Sure, you can show him that.

J9OKZHAC

Zhang - Cross

1 BY MR. LI:

2 Q. Mr. Zhang, so take your time and flip through this document  
3 and let me know when you're ready for question.

4 A. Yes.

5 Q. Can you tell flip through --

6 A. I can't understand it, though.

7 Q. Okay.

8 Can you flip to the last page of this document. Do  
9 you see your signature on this page?

10 A. Yes.

11 Q. So, your signature reads as Y-u Z-h-a-n-g right above your  
12 name; is that right?

13 A. Yes.

14 Q. Can you describe to me the circumstances under which you  
15 signed this document?

16 A. It was last time when I went up to the attorneys' office,  
17 where a lot of correction needed to be done because of some  
18 error in what I could remember.

19 Q. Do you remember when was that?

20 A. It was after I went to the attorneys' office.

21 Q. Okay. So, appears on the document it is dated on June 26,  
22 2019. Is this the correct date?

23 A. Yes.

24 Q. Do you remember if you signed this document before a notary  
25 public or not?

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Zhang - Cross

1 A. What do you mean by "notary public"? And I don't remember.

2 Q. Okay. So, you do remember that you signed this document;  
3 is that right?

4 A. Correct.

5 THE COURT: Can I ask a question about the affidavit.  
6 Can you look at the bottom on the last page. There is a stamp  
7 that says "John Troy, Notary Public." Do you see that?

8 THE WITNESS: Yes.

9 THE COURT: Do you know who John Troy is?

10 THE WITNESS: My attorney.

11 THE COURT: Okay. Was this affidavit translated for  
12 you before you signed it?

13 THE WITNESS: Yes. Prior to that, yes.

14 THE COURT: Was it explained to you before you signed  
15 it?

16 THE DEFENDANT: Yes.

17 THE COURT: Who translated it? And who explained the  
18 affidavit to you?

19 THE WITNESS: Employee -- an employee from the  
20 attorneys' office.

21 THE COURT: An employee translated it for you?

22 THE WITNESS: Yes.

23 THE COURT: And did an employee explain it to you,  
24 also?

25 THE WITNESS: Yes.

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Zhang - Cross

1 THE COURT: But it was or was not John Troy who  
2 translated or explained it to you?

3 THE WITNESS: No, it was, rather, an employee from  
4 there.

5 THE COURT: And it wasn't Mr. Schweitzer here either,  
6 right?

7 THE WITNESS: No, no.

8 THE COURT: Can you describe who the employee was?

9 THE WITNESS: Chinese, wear glasses, on the chubby  
10 side.

11 THE COURT: Male or female?

12 THE WITNESS: Male. Male.

13 THE COURT: Do you know if they were a lawyer or not?

14 THE WITNESS: I don't know.

15 THE COURT: I'm sorry, I interrupted you. Go ahead.

16 MR. LI: Okay.

17 BY MR. LI:

18 Q. But earlier you testified that you actually didn't visit  
19 your attorneys' office and didn't had any conversation with  
20 anyone in that office after the deposition; is that correct?

21 A. Previously, what I meant to say was, I have not met up with  
22 my attorney, this attorney.

23 Q. I believe I was right, I did ask you, did you actually go  
24 to your attorneys' office. The answer was negative.

25 Do you remember you confirmed that?

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Zhang - Cross

1 MR. SCHWEITZER: Objection.

2 THE COURT: I'll let him answer the question.

3 THE WITNESS: Previously, I said I have not met with  
4 my attorney. I have not met with my attorney, not even once.

5 BY MR. LI:

6 Q. So, the document in front of you -- and you did review it  
7 after the deposition in June; is that correct?

8 A. It's the first time I've seen this today -- oh, no, no.

9 No, no. Last time at the attorneys' office, I saw it.

10 Q. So did you saw it or did you not saw it at your attorneys'  
11 office?

12 A. I saw it.

13 Q. And you reviewed this document together with a person in  
14 that law office; is that correct?

15 A. Yes, yes.

16 Q. And you confirmed that everything contained in this  
17 document is truth; is that correct?

18 A. Yes.

19 Q. And you signed this document; is that correct?

20 A. Yes.

21 Q. You understand this is an affidavit of yours; is that  
22 right?

23 A. Yes, correct.

24 Q. So, other than this document, other than this particular  
25 document you are reading and flipping through at this moment,

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Zhang - Cross

1 is there any other document you reviewed after June deposition?

2 A. After deposition? No.

3 Q. Are you sure about that?

4 A. I'm sure.

5 MR. LI: Your Honor, I want this Court to take  
6 judicial notice of a document I didn't print up, but I have the  
7 number here. It's 23-2, which is also purportedly to be the  
8 affidavit for this witness. The reason I didn't print this out  
9 was I overlooked it myself, and I went to the reporting office  
10 this morning, and they didn't have the person to accept my  
11 payment, so they didn't give me the document. So if we have a  
12 chance to have a break, I will be able to get it. The reason I  
13 want to introduce that document is because, number one, that  
14 document seems to having the identical signature and notary  
15 page, yet these two documents are different documents. These  
16 are not -- these two documents, 23-2, and this one, 30-4, they  
17 are not the same documents.

18 THE COURT: All right. Let's take a break. We can  
19 certainly take the time to print out copies, so that  
20 Mr. Schweitzer can see what we're referring to, and what Mr. --  
21 so Mr. Zhang can see as well. I want to counsel Mr. Schweitzer  
22 not to have any conversations with Mr. Zhang while we're on a  
23 short break. I will have a member of my staff print out copies  
24 of ECF 23-2 and bring them to the courtroom, so that everybody  
25 has a copy. I anticipate all of this will take about five to

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Zhang - Cross

1 ten minutes, but I would like the parties to all stay where you  
2 are, including Mr. Zhang, please stay in the witness box. We  
3 will be right back. Thank you.

4 (Recess)

5 THE COURT: Mr. Li, please continue.

6 BY MR. LI:

7 Q. Mr. Zhang, so now you have the two documents in front of  
8 you; is that right?

9 A. Yes.

10 Q. Now, I direct you to take a look at a document with the top  
11 marked 23-2. Can you take that document, and flip through it  
12 and let me know when you are ready for question.

13 A. Okay.

14 Q. Have you seen this document before today?

15 A. Yes. The day that I signed, I saw it.

16 Q. So, the day you saw it, you sign it. So if you go to the  
17 last page of this document, it appears that the document is  
18 dated June 26, 2019; is that right?

19 A. Yes.

20 Q. So, can you also tell me if you signed this document  
21 together with the other document by your side?

22 MR. LI: By identification purpose, the document by  
23 his side, I refer to document 20 -- document 30-4.

24 THE WITNESS: Well, the dates on it are the same.

25 Q. Okay. My question to you is: Did you or did you not sign



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Zhang - Cross

1 both documents on the same date?

2 A. I don't remember.

3 Q. But you do remember that you signed both; is that correct?

4 A. Correct.

5 Q. And that you do remember where you signed both documents;  
6 is that right?

7 A. Yes.

8 Q. Can you tell us where?

9 A. At the office, attorneys' office.

10 Q. But earlier you testified that other than document 30-4,  
11 you didn't review any other document after June's deposition;  
12 is that correct?

13 A. Yes.

14 Q. So, what happened to document 23-2? When did you review  
15 that?

16 A. I forgot.

17 Q. You forgot.

18 But you do remember signing it in the attorneys'  
19 office; is that right?

20 A. Correct. Correct, yes.

21 Q. Was it prior to your signing of document 30-4 or after your  
22 signing of 30-4?

23 A. Should be the same dates because the dates on it are the  
24 same.

25 Q. Okay. So, before you signing the document 23-2, did anyone

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Zhang - Cross

1 translate the contents of document to you?

2 A. Yes.

3 Q. Can you tell us who is that person, without disclosing the  
4 actual communication?

5 A. An employee from the law office.

6 Q. So, you signed both documents on the same day, June 26,  
7 2019; is that right?

8 A. Yes.

9 Q. Did any of your attorney here, Mr. Schweitzer or Mr. Troy,  
10 review document 23-2 with you?

11 MR. SCHWEITZER: Objection.

12 THE COURT: I think that's a fair question.

13 THE WITNESS: No.

14 BY MR. LI:

15 Q. Did Mr. Schweitzer or Mr. Troy review document 30-4 with  
16 you?

17 A. It was explained by an employee there.

18 Q. So, now, you are 100 percent sure you signed both documents  
19 on June 26, 2019, in your attorneys' office; is that right?

20 MR. SCHWEITZER: We covered this ground.

21 THE COURT: Yes. Some of it goes to credibility.

22 I'll allow it.

23 THE WITNESS: Yes.

24 Q. Before you signed these two documents, did you understand  
25 the effect of both documents?

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Zhang - Cross

1 A. Yes, I was aware.

2 Q. Did you only sign one signature page for both documents or  
3 actually you signed two signature pages, one for each document?

4 A. After I signed that copy, I realized there were other  
5 things that I needed to change and add after I read 30-4.

6 Q. So, you signed 30-4 first; is that right?

7 A. Yes.

8 Q. Then you find out there is some inaccuracy there, then you  
9 signed 23-2; is that right?

10 A. Correct.

11 Q. So, 30-4, based on today's testimony, is not entirely  
12 accurate?

13 A. Correct.

14 Q. Now, can you go to the last page of each document. That  
15 will be the signature page for each document; is that right?

16 A. Yes.

17 Q. Now, let me ask you one question. Okay?

18 When you compare these two signature pages, do you  
19 think they are of the same page or they are of two different  
20 signatures by you?

21 MR. SCHWEITZER: Objection.

22 THE COURT: I'll allow it. Go ahead.

23 THE WITNESS: I signed it all.

24 BY MR. LI:

25 Q. So, you signed separately, you didn't sign on one signature

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Zhang - Cross

1 page only; is that right?

2 A. No, no, no, separate. Separate.

3 Q. So, it is your testimony, by looking at the signature pages  
4 for document 23-2 and the document 30-4, that these two  
5 signature pages are of two different signatures by you; is that  
6 correct?

7 A. Correct.

8 THE COURT: Mr. Li, please move on to the next topic.

9 MR. LI: Okay, okay.

10 BY MR. LI:

11 Q. Now, here I want to -- I will wait for a later time.

12 I want to direct your attention to document 23-2 that  
13 you said is accurate. Is that right, 23-2 is accurate?

14 A. Yes, yes.

15 Q. Now, you know the content, and you confirm it's all truth;  
16 is that right?

17 A. Correct.

18 Q. I direct your attention to page 3 of that document. I  
19 direct you to paragraph 25. Can you read paragraph 25?

20 A. Not able to read -- not able to understand.

21 Q. Okay. So, I'm going to read for you. It's short.

22 "Throughout my employment, I did not get a share of the tips."

23 A. Correct, correct.

24 Q. Okay. So, I believe you early testified that you did  
25 receive tips. Which one is correct?

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Zhang - Cross

1 A. All accurate, all accurate, because sometimes I was able to  
2 receive tips, sometimes they were deducted by the boss.

3 Q. So, you did receive tips?

4 A. Yes.

5 Q. So, paragraph 25 is not entirely true?

6 A. I feel that is entirely accurate.

7 THE COURT: Okay. Mr. Li, please move on. I think  
8 you've established the inconsistency.

9 MR. LI: All right. Okay.

10 BY MR. LI:

11 Q. So, you said document 30-4 is not accurate, right?

12 A. 30-4 is basically accurate.

13 Q. So, which part of 30-4 is not accurate?

14 A. Some content was missing compared to the other copy.

15 Q. So, 23-2 --

16 THE COURT: Sorry, some what was missing?

17 THE INTERPRETER: Some content.

18 MR. LI: There's no question of what content.

19 THE COURT: I have a question. "Some content," I want  
20 to know, what does he mean by that?

21 THE WITNESS: I meant 18 of document 23-2.

22 THE COURT: I don't understand. You named 18?

23 THE WITNESS: No changing room, actually. No changing  
24 room.

25 THE COURT: Where -- that's in 30-4?

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Zhang - Cross

1 THE WITNESS: It's missing -- the content was missing  
2 from 30-4.

3 MR. SCHWEITZER: If I may, your Honor, there is  
4 language on 23-2 talking about what he testified to --

5 MR. LI: Your Honor, plaintiff's counsel is  
6 speaking --

7 MR. SCHWEITZER: We spent --

8 THE COURT: Stop, stop, stop. Some of this -- the  
9 door was opened by the plaintiff here. Now I have him on the  
10 stand, and he's given, at best, some inconsistent testimony on  
11 possibly some material facts. However, we are not at a trial  
12 here, so why don't we move on, Mr. Li. If you want to point  
13 out inconsistencies or impeach the witness with prior  
14 testimony, whether it's in an affidavit or by deposition, go  
15 right ahead, but I ask you to try to keep your questions quick  
16 and move this along. Okay? Remember why we're here. We're  
17 not here on a trial.

18 MR. LI: Okay. I understand that, yes.

19 BY MR. LI:

20 Q. I just want to understand: Are you saying that document  
21 23-2 includes everything you want to say and includes  
22 everything in document 30-4?

23 THE COURT: Objection sustained. Mischaracterizes  
24 prior testimony, sustained. Please move on.

25 Q. So, let me ask you: Shall we disregard 30-4 since you are

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Zhang - Cross

1 saying that it doesn't have everything you need to say?

2 MR. SCHWEITZER: Objection.

3 THE COURT: Let me hear the question again.

4 BY MR. LI:

5 Q. Should we disregard document 30-4 because you're saying  
6 that --

7 THE COURT: Objection sustained. Move on, please.

8 Q. Do you remember, in your deposition in June, you testified  
9 that you don't remember the exact starting date of employment  
10 and you don't remember exact termination date of employment at  
11 this particular restaurant?

12 A. Last time? I don't recall. I cannot remember.

13 THE COURT: Okay. Mr. Li, I appreciate what you're  
14 trying to do here. However, as I said before, this is an  
15 evidentiary hearing.

16 MR. LI: Right.

17 THE COURT: I'd like to -- you have a lot of testimony  
18 from Mr. Zhang now. I will not limit you from making arguments  
19 later about particular testimony and whether there might be  
20 inconsistencies.

21 MR. LI: Okay.

22 THE COURT: So, I'd like to try to have you finish up  
23 with Mr. Zhang as quickly as you can in terms of whether  
24 there's any particular testimony you'd like to cross him on.

25 MR. LI: Okay, sure.

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Zhang - Cross

1 THE COURT: Let's try to finish this up quickly.

2 MR. LI: All right.

3 BY MR. LI:

4 Q. Earlier you testified that you took the shuttle bus to the  
5 restaurant and from the restaurant; is that right?

6 MR. SCHWEITZER: Mischaracterizes. He used the term  
7 van.

8 THE COURT: Call it a van.

9 MR. LI: Okay. I just rephrase my question.

10 BY MR. LI:

11 Q. So earlier you testified that you took the van to the  
12 restaurant to work, and in the evening, you took the van from  
13 the restaurant back to Flushing; is that right?

14 A. Yes.

15 Q. Remind me who you believe was the driver of that van.

16 A. The person sitting there with the white clothing.

17 THE COURT: And that is who, Mr. Li?

18 MR. SCHWEITZER: With or without glasses?

19 THE COURT: Wait, wait.

20 MR. LI: For identification purpose, this is  
21 Mr. Zheng, Z-h-e-n-g.

22 THE COURT: Okay. Thank you.

23 BY MR. LI:

24 Q. Based on your memory, did Mr. Zheng work seven days a week?

25 A. Since it's been three years, more than three years, a lot



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Zhang - Cross

1 of things, I don't remember any detail. I don't remember.  
2 Perhaps he has one day off per week. Exactly which day, I  
3 don't remember, I'm not sure.

4 Q. Was Mr. Zheng the only driver of that van?

5 A. I believe possibly if he's off, someone is there to  
6 substitute him.

7 Q. Okay. Do you remember who that person is?

8 A. I don't recall.

9 Q. Was that person a male or female?

10 A. I don't remember.

11 Q. Earlier you testified the van is a 15-seater, right?

12 A. Yes.

13 Q. Based on memory, how many employees were there when you  
14 were working there?

15 A. Between 12 to 15.

16 Q. Does it include Mr. Zheng?

17 A. Included.

18 Q. Does it include the boss sitting in the defense table?

19 A. Included. Included.

20 Q. So, basically, the entire employee staff of this restaurant  
21 can fit into that van; is that right?

22 A. Sometimes it's not full when some of them are off.

23 Q. And sometimes the boss would drive because there's no more  
24 room in the van; is that right?

25 A. Sometimes the employee would take a ride with the smaller

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Zhang - Cross

1 sedan because the van is full.

2 Q. And also you testified that you got picked up somewhere in  
3 Flushing, right?

4 A. Yes.

5 Q. I remember earlier in the deposition in June, that you say  
6 you don't remember the pickup location. Is that right?

7 A. Yes. Yes, I couldn't recall at that time.

8 Q. But you did give the exact location of that pickup spot  
9 today; is that right? You even give the address; is that  
10 right?

11 MR. SCHWEITZER: Objection; badgering.

12 THE COURT: It's not badgering. He testified to an  
13 address. We're on cross.

14 THE WITNESS: Yes, yes.

15 BY MR. LI:

16 Q. Can you tell us why, all of a sudden, you remember  
17 everything now?

18 A. Because I go to the bakery quite often to buy coffee,  
19 bread, whatnot, and I remember because of that. And the van is  
20 right there and even the plate number.

21 Q. Okay. So you mean that you saw the van picking up  
22 employees after June's deposition; is that right?

23 A. I didn't, but I saw the van pass by the bakery. Pass by.

24 Q. The van passed by the bakery, but you didn't see it  
25 stopping there, didn't you?

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Zhang - Cross

1 A. No, no. I saw it pass by, and then that reminded me, three  
2 years ago, that's where it was.

3 Q. When was that? When did you start remembering the actual  
4 location of the pickup?

5 A. When I went to buy bread and saw the van.

6 THE COURT: When? Do you remember a date, a month?

7 THE WITNESS: This month, this month.

8 THE COURT: Okay. Please move on, Mr. Li.

9 MR. LI: Yes.

10 BY MR. LI:

11 Q. And while you were taking that van, did all the employees  
12 got picked up at that particular location?

13 A. At that time, at my time, yes.

14 Q. Did anyone got dropped off at the same location in  
15 Flushing?

16 A. I don't recall whether it was the same spot or not.

17 THE COURT: Mr. Li, how much more do you think you  
18 have for this witness?

19 MR. LI: I'm looking at four or five more questions.  
20 I'm almost done.

21 THE COURT: Okay. Thank you.

22 MR. LI: I have a couple more, maybe one last  
23 question.

24 BY MR. LI:

25 Q. You say that you change in a restroom in the restaurant

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Zhang - Cross

1 into the uniform; is that right?

2 A. Yes.

3 Q. Do you remember how many restrooms are there in the  
4 restaurant?

5 A. Two bathrooms in the restaurant.

6 Q. So, are you using both restrooms to change into uniforms or  
7 you use one particular one?

8 A. A fixed one, a permanent one.

9 Q. Okay. So out of those two restrooms that you referred to  
10 that, you didn't use one of those two, but you only used one of  
11 the other remaining restroom; is that right?

12 A. Correct.

13 Q. Okay. So, when -- the restroom that you change into the  
14 uniforms, was it available only for the employees or it was  
15 also available for the customers?

16 A. Both, employee and the public.

17 Q. So, usually, when you went into that restroom to change in  
18 and out of your uniforms, do you remember if the light was  
19 usually on or off?

20 A. Should be on. Should be on.

21 MR. LI: I don't have more questions to this witness.

22 THE COURT: Thank you.

23 Any redirect, Mr. Schweitzer?

24 MR. SCHWEITZER: No.

25 THE COURT: Thank you.

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Chen - Direct

1           You are excused. Thank you very much. You can sit  
2 back down.

3           (Witness excused)

4           THE COURT: Mr. Li, do you have any witnesses you'd  
5 like to call, or would you like to move to argument?

6           MR. LI: Yes, I do have witnesses to call. I would  
7 like to call defendant, Ai Lan Chen.

8           THE COURT: Okay. Come on up, take the stand.

9           Is there something you needed to say, Mr. Schweitzer?

10          MR. SCHWEITZER: Yes. I would just like to note that  
11 Ai Lan Chen has not provided an affidavit in opposition to  
12 Mr. Zhang's motion.

13          THE COURT: I will allow it since she is the one who  
14 attended Mr. Zhang's deposition, right?

15          MR. SCHWEITZER: Yes.

16          THE COURT: Okay.

17          AI LAN CHEN,

18           called as a witness by the Defendants,

19           having been duly sworn, testified through the

20           Mandarin interpreter as follows:

21          DIRECT EXAMINATION

22          BY MR. LI:

23          Q. Ms. Chen, I'll keep it brief.

24          A. Okay.

25          Q. Prior to June's deposition, had you seen the plaintiff

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Chen - Direct

1 before?

2 MR. SCHWEITZER: Leading.

3 THE COURT: I believe that we all know this is one of  
4 the issues in this case, okay? So let's just let this proceed  
5 at a relatively quick pace since I actually have parties coming  
6 in at 2:00 because I thought we'd be done by now.

7 THE WITNESS: No.

8 BY MR. LI:

9 Q. Did plaintiff work for you in any capacity?

10 A. No.

11 Q. The restaurant at 802 Pelham Drive, when did you first open  
12 that?

13 A. Possibly 2004. I'm not exactly sure. I don't remember  
14 exactly.

15 Q. Have you ever hired a full-time busboy in that restaurant?

16 A. No.

17 Q. Have you ever hired any busboy in that restaurant?

18 A. Only holidays or Mother's Days, for example, and a Hispanic  
19 person would come over and help out for a day or two. That's  
20 all.

21 Q. So other than that person, you have never hired a busboy,  
22 let alone a full-time busboy; is that right?

23 A. No, I never -- I did not.

24 Q. You heard plaintiff's testimony that he took vans to and  
25 from work; is that correct?

J9OKZHAC

Chen - Direct

1 A. I heard.

2 Q. Is that true?

3 MR. SCHWEITZER: Objection.

4 THE COURT: I'll allow it.

5 THE WITNESS: Can I have the question again?

6 BY MR. LI:

7 Q. Okay. Did plaintiff take the van to and from your  
8 restaurant for work purposes?

9 A. This person was never at my restaurant, nor he was ever in  
10 my van.

11 Q. Did all your other employees regularly take vans to and  
12 from work?

13 A. Yes, yes. All of them, yes.

14 Q. Who is the driver usually?

15 A. Mr. Zheng.

16 Q. You mean Mr. Zheng, Z-h-e-n-g?

17 A. Yes, Mr. Zheng, Z-h-e-n-g.

18 THE COURT: And that is the man sitting in the white  
19 hooded sweatshirt?

20 THE WITNESS: Yes.

21 BY MR. LI:

22 Q. Does Mr. Zheng drive every single day?

23 A. No.

24 Q. Can you tell us on which day he doesn't drive?

25 A. Wednesday, he does not drive. I drove.

J9OKZHAC

Chen - Direct

1 Q. Is this your testimony, that other than Wednesday,  
2 Mr. Zheng drives a van to and from the restaurant, and on  
3 Wednesday, it is you who drive the van to and from the  
4 restaurant? Is that right?

5 A. Yes. Yes, correct.

6 Q. So, other than you and Mr. Zheng, was there any other  
7 driver who used to drive the van to and from the restaurant?

8 A. No.

9 Q. Based on your memory, was there any driver in 2016 other  
10 than you and Mr. Zheng would drive the van to and from the  
11 restaurant?

12 A. You want to know whether there's anybody else driving the  
13 van, right?

14 Q. That's correct.

15 A. No.

16 MR. SCHWEITZER: I don't believe any of this is  
17 disputed. Can we move on?

18 MR. LI: I think it was, but, anyway, I'm done with  
19 this.

20 BY MR. LI:

21 Q. Do you see the gentleman sitting in the gallery wearing  
22 glasses?

23 A. He is my manager who works at my restaurant on a daily  
24 basis.

25 Q. In 2016, was he working for you as well?



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Chen - Direct

1 A. Yes.

2 Q. So, in 2016, how was he going to work?

3 A. He takes my van in the morning to go to work. The same  
4 thing at night, after work, takes the van back.

5 Q. Did he drive sometimes?

6 A. Never. He never drove.

7 Q. Is it your testimony that he always took the van? Is that  
8 right?

9 A. Sometimes Friday and Saturdays, when he works half a day,  
10 he takes the bus himself.

11 Q. But he didn't drive?

12 A. No.

13 MR. SCHWEITZER: Again, none of this is disputed.

14 MR. LI: Okay. All right.

15 BY MR. LI:

16 Q. So, if someone worked for you in 2016, do you think Alex  
17 Wong here, the gentleman with glasses, would know about it?

18 MR. SCHWEITZER: Objection.

19 THE COURT: I'll allow it. This is a disputed fact in  
20 this case and in your motion for conditional collective cert.

21 MR. SCHWEITZER: How can she testify as to his  
22 knowledge? Furthermore, he is here and can testify to his own  
23 knowledge.

24 THE COURT: All right, go ahead. Mr. Li, that is --  
25 that objection is sustained.

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Chen - Direct

1 MR. LI: Okay.

2 THE COURT: Do you want to call Mr. Wong? I see my  
3 2:00 o'clock, or at least some for it are here.

4 MR. LI: I will afterwards, yes. Let's give me  
5 another question, and I'm done with this witness.

6 THE COURT: Okay.

7 BY MR. LI:

8 Q. How many bathrooms were there in your restaurant in 2016?

9 A. Four altogether since day one, since grand opening.  
10 Kitchen, there's one, and three outside the kitchen.

11 Q. So, was the kitchen bathroom available for customers?

12 A. No. Only employees.

13 Q. Were all the three bathrooms, other bathrooms, three other  
14 bathrooms, available for customers?

15 A. Yes, it's meant for the customer.

16 Q. So, all three bathrooms available for customers, correct?

17 THE COURT: Let me try to cut this short.

18 THE WITNESS: Yes.

19 THE COURT: Of the three bathrooms that were available  
20 for customers, were any employees allowed to use those  
21 bathrooms?

22 THE WITNESS: If it's busy inside, yes, they allowed  
23 to.

24 MR. LI: Okay. I have no more questions for this  
25 witness.

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Chen - Cross

1 THE COURT: Okay. Any cross?

2 MR. SCHWEITZER: Briefly.

3 MR. LI: So, I would like to call Alex.

4 THE COURT: Oh, Mr. Schweitzer wants to cross.

5 MR. LI: Oh, I see. I'm sorry.

6 CROSS-EXAMINATION

7 BY MR. SCHWEITZER:

8 Q. You were given a picture of Mr. Zhang to look at before his  
9 deposition in June, correct?

10 A. Yes.

11 Q. And you did look at it before his deposition in June,  
12 correct?

13 A. Yes, I looked at it, and he never work a day at my  
14 restaurant.

15 Q. So it's not true what you said before, that you've never  
16 seen him before the deposition, right?

17 A. Can you repeat?

18 Q. So, because you saw his face in the picture, it's not true  
19 that the first time you saw him was at his deposition, right?

20 MR. LI: Objection.

21 THE COURT: I'll allow this one question, and then you  
22 need to move on, Mr. Schweitzer.

23 MR. SCHWEITZER: Of course.

24 THE WITNESS: Well, no. The question was whether I  
25 saw him working at my restaurant prior to that, and the truth

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Chen - Cross

1 is, I never saw him at my restaurant.

2 BY MR. SCHWEITZER:

3 Q. Hibachi leaves a lot of grease and residue on the tables,  
4 correct?

5 A. I don't understand. What do you mean? Can you repeat?

6 Q. After a hibachi table is used -- that table has been used  
7 to cook food on it, right? So after it's used, it has a lot of  
8 grease and residue on it, right?

9 A. No. After the hibachi chef do his thing, it's cleaned  
10 thoroughly.

11 Q. You're right ahead of me. That was my next question.

12 Who does that cleaning?

13 A. The chef.

14 Q. And who cleans the non-hibachi tables between their uses by  
15 customers?

16 A. The waitstaff.

17 Q. Do you recall being asked to produce a document reflecting  
18 your employee roster for the period Mr. Zhang alleges he was  
19 employed in 2016?

20 MR. LI: Objection.

21 THE COURT: I'll allow this one question. Let's go  
22 on. Move on, Mr. Schweitzer.

23 THE WITNESS: What did you say? Can you repeat?

24 BY MR. SCHWEITZER:

25 Q. My question is: Do you recall being asked to produce an

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Chen - Cross

1 employee roster for the period Mr. Zhang alleges he was  
2 employed in 2016?

3 A. Why would I have to provide that? All my employees are  
4 here. Some of my employees are right here.

5 Q. Did you produce such a thing?

6 THE COURT: Mr. Schweitzer, what are you getting at?

7 MR. SCHWEITZER: If her allegation is that he never  
8 worked for her, the employee roster would either show that or  
9 not. It would be useful to this evidentiary hearing.

10 THE COURT: Well, was an employee roster produced or  
11 not?

12 MR. SCHWEITZER: It was not.

13 THE COURT: Okay. Let's move on.

14 BY MR. SCHWEITZER:

15 Q. You mentioned that each of the other individuals that were  
16 brought here by your attorney were your employees.

17 Do they currently work for you?

18 A. Yes, still works there now.

19 Q. And you pay their wages, right?

20 A. Obviously. Otherwise, they wouldn't work, right?

21 Q. Did you promise them anything in value in exchange for  
22 their testimony today?

23 A. They were here for justice. This person did not work at my  
24 place at all.

25 Q. Did you tell them you would discipline them or fire them if

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Chen - Cross

1 they didn't testify before you today?

2 A. No.

3 Q. Are these three the only employees who worked for you  
4 during the period Mr. Zhang says he was employed in 2016?

5 A. All of them, all of them, all three sitting there, yes,  
6 excluding this person here.

7 Q. Let me put it another way: Were these three the only  
8 employees among your current employees?

9 THE COURT: Objection; relevance, sustained. Please  
10 move on.

11 Q. Did you tell these employees that there was this lawsuit  
12 going on?

13 A. Tell them about what lawsuit?

14 Q. This one that we're here for now.

15 A. I merely show the picture to the manager and ask him to  
16 identify whether this person had ever worked at our restaurant  
17 before.

18 Q. Have you spoken to the waitress or the kitchen head about  
19 this lawsuit?

20 A. Yes, did discuss whether this person had ever worked at the  
21 restaurant, yes.

22 Q. And did you ask them to provide affidavits saying that he  
23 didn't work for you?

24 A. Can you repeat that?

25 Q. Did you ask these employees to provide affidavits saying

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Chen - Cross

1 that Mr. Zhang didn't work for you?

2 A. Nothing like that was written.

3 Q. Each of these three employees has, in fact, provided an  
4 affidavit in your support. Did you ask them to do that?

5 A. Why would I have to do that?

6 THE COURT: Mr. Schweitzer, where are you going with  
7 this?

8 THE WITNESS: What do you mean by affidavit?

9 BY MR. SCHWEITZER:

10 Q. Any written sworn statement.

11 A. Yes, yes, affidavit, something like that, was written that  
12 he never work at the restaurant. They did write that, yes.

13 Q. Did you tell them to write that?

14 THE COURT: Mr. Schweitzer --

15 Do not answer that question.

16 -- I asked you several times where you're going with  
17 that. Whether she asked them or whether counsel asked them,  
18 the fact is this, that these affidavits were submitted, right?

19 MR. SCHWEITZER: Yes. I want to know whether the  
20 contents of the affidavits were determined freely by those  
21 employees.

22 THE COURT: How is that relevant? It has been ongoing  
23 since before Mr. Zhang's deposition that they've asserted that  
24 Mr. Zhang never worked at the restaurant. So, I don't think  
25 we're going to -- I'm not sure how this is relevant unless

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Chen - Cross

1 you're planning to -- I just don't see how this relates to your  
2 motion. And we have conflicting facts, right? I'm the one who  
3 has to determine whether, based on the credibility of the  
4 witnesses I'm seeing -- you're not going to ever get her to  
5 say -- admit that -- whatever it is that you want to admit, but  
6 even if she said she told them to submit affidavits, that still  
7 doesn't get you there. That's consistent with what the defense  
8 position has been since the start of this case.

9 MR. SCHWEITZER: What I'm trying to get at is whether  
10 the contents of the affidavit were directed by her or whether  
11 it was freely given testimony by the affiants.

12 THE COURT: I believe she already testified that she  
13 showed the picture to the employees, and they said he didn't  
14 work there.

15 MR. SCHWEITZER: She testified that she showed the  
16 picture to the manager, only the manager.

17 THE COURT: You know what, that's enough, okay? I'm  
18 done. I'm done with this. Do you have another line of  
19 questioning on cross?

20 BY MR. SCHWEITZER:

21 Q. When was the first time you spoke with the employees about  
22 this lawsuit?

23 A. I already asked them about this name at the time the case  
24 initially was served.

25 MR. SCHWEITZER: Nothing further.



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1 MR. LI: I do not have further questions. I do want  
2 to call Alex.

3 THE COURT: Can you give me a little proffer about the  
4 topics you're going to ask this witness on and why they're not  
5 duplicative of what's already been done today?

6 You may step down. Thank you.

7 (Witness excused)

8 MR. LI: There's three witnesses here, and one is  
9 Alex, the manager. If there's anybody who worked for the front  
10 of house, he would know. And, also, he could testify that he  
11 never drove. Of course, the plaintiff concede that already; I  
12 don't have to do that. But, also, waitress, Lily Yap, he could  
13 testify that he never worked with this person.

14 THE COURT: They all submitted affidavits to that  
15 effect, right?

16 MR. LI: All right, that's fine. So the affidavit is  
17 basically their testimony. So if plaintiff has any cross, they  
18 are available.

19 THE COURT: Well --

20 MR. SCHWEITZER: I would have about two questions for  
21 each of them.

22 THE COURT: Two questions for each of them? I'd like  
23 to hear a proffer. What are those questions?

24 MR. SCHWEITZER: Each of the affidavits --

25 THE COURT: And I need Mr. Kwok to be translating.

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1 MR. SCHWEITZER: Each of the affidavits is entirely in  
2 English, and it's --

3 THE COURT: Wait, wait, wait, stop. Mr. Kwok needs to  
4 get the witnesses up to speed.

5 THE INTERPRETER: Okay.

6 (Pause)

7 THE COURT: Okay.

8 What are the two questions?

9 MR. SCHWEITZER: Each of the affidavits is entirely in  
10 English, contains no statement of translation, and it's not  
11 notarized. I want to know whether the affiants had the  
12 affidavits explained to them, translated to them line by line,  
13 who did that, and whether it was in the presence of a notary.

14 THE COURT: Okay. We'll wait until the translation is  
15 done.

16 Mr. Schweitzer, I will note that exhibits that are  
17 found at ECF 30-4 and 23-2 do not have the same explanation  
18 near the notary signature, whether they were translated and  
19 explained to them. Based on their answers, what would you  
20 argue -- how would you argue that this supports or doesn't  
21 support your motion? And why is it relevant?

22 MR. SCHWEITZER: These are affidavits proffered in  
23 opposition to the motion. If they were --

24 THE COURT: Are you suggesting that Mr. Li or someone  
25 from his office might have suborned perjury?

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MR. SCHWEITZER: Possibly, yes.

THE COURT: Really? I'm a little bit concerned because there may be some pots and kettles in this room or possibly some people throwing stones from glass houses. Okay?

I would like to hear from Mr. Li if he can proffer -- because I think this will cut some of this a little bit short -- whether he has any understanding of whether the affidavits were translated and/or explained to the affiants before he submitted them. I would expect, under his duties as an officer of the Court, that he would ensure that affidavits are truthful and correct before they are submitted to this Court.

Okay, Mr. Li?

MR. LI: Okay.

I will start with Mr. Zheng here. I met with Mr. Zheng previously, and based on what he told me, I drafted his affidavit, and once it's drafted, I explained to Mr. Zheng, and he signed, and that's the extent of my communication with Mr. Zheng. Of course, later on, I met with him again and confirmed again the content of his affidavit, and he again confirmed that everything here in his declaration is true.

Now, as far as Mr. Wong, Alex Wong, I met with him, and I also spoke to him on the phone, and I emailed the affidavit I drafted for him based on my conversation with him to my client, and my client supposedly give the declaration to

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1 Mr. Wong to sign. And that's the extent of my communication  
2 with Mr. Wong.

3 And as far as Ms. Yap is concerned, I spoke to her on  
4 the phone, and based on my conversation with Ms. Yap on the  
5 phone, I drafted her declaration, and I emailed the declaration  
6 to my client, and supposedly my client provided declaration for  
7 her to sign, and I receive their signature pages in emails.

8 THE COURT: I will next hear about five minutes of  
9 argument on your motion.

10 MR. SCHWEITZER: Mr. Zhang has given extensive,  
11 excruciating detailed testimony about the restaurant, about his  
12 work hours, about how he was paid, about how the other  
13 employees were paid, about their work hours, and how he knows  
14 all of those facts related to other employees.

15 Of the facts alleged in the various affidavits that  
16 were proffered against him, none, other than the bare  
17 allegation that he never worked for Yumi Sabrina, actually  
18 contradicts any of the facts that he said.

19 There was testimony about the front entrance, there  
20 was testimony in the affidavits that purportedly contradict  
21 that, but there is no actual contradiction. It's a single  
22 entrance set into a larger glass pane. That's what he  
23 testified to, and that is what is in the affidavits.

24 He testified that he changed in a bathroom. That's  
25 also in the affidavits proffered in opposition.

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1           Besides the testimony of the defendant herself, three  
2 employees who currently work for her and are financially  
3 dependent on her, who may or may not have actually read the  
4 documents that are entirely in English and that were presented  
5 to them by her, as stated by Mr. Li, to sign, there is nothing  
6 to say that Mr. Zhang didn't work at the restaurant and didn't  
7 experience all of the things that he testified extensively  
8 about.

9           This is a motion on conditional collective  
10 certification. Mr. Zhang's proffer is that there are other  
11 employees similarly situated to him who did not receive  
12 overtime. That is what he has testified to today. That is  
13 what we needed to carry on our motion. The motion should be  
14 granted.

15           THE COURT: Okay. Thank you.

16           Mr. Li?

17           MR. LI: Okay.

18           Contrary to the opposing counsel just argued, that --  
19 there are just so many material inconsistencies in plaintiff's  
20 testimony. There are basically five versions of the story:  
21 One version is the complaint, filed December 29, 2018. One  
22 version is his deposition at June 17, 2019. And on June 26,  
23 2019, he produced two different affidavits bearing exactly the  
24 same signature page. Even he himself doesn't know which one is  
25 correct. He told us the one, 23-2, should be the one which

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1 includes everything he needs to say. However, the one he  
2 didn't mention was 30-4. It's the only supporting document for  
3 plaintiff's 216(b) motion. If we disregard that 30-4 document,  
4 there is no basis for plaintiff's certified 216(b) collective  
5 certification.

6 And, also, there is today's testimony, five version of  
7 testimony, five version of his inconsistent testimonies.

8 There is restaurant names are different. The food  
9 served in the restaurants, they're different. Originally, he  
10 alleges it was sushi served, that there is a sushi chef, and  
11 then he said there's no sushi at the address.

12 Employment date: In deposition, he didn't remember.  
13 Miraculously, ten days after, he remembered exactly the dates.

14 Employees: He said was 20 in the complaint; ten to  
15 thirteen in the deposition; 12 in the declaration, June 26, and  
16 15 today.

17 Kitchen employees: Eight in the complaint, four to  
18 five in the deposition; six in the declarations.

19 Sushi chefs: In the complaint -- there are three  
20 deposition declarations. There's no one there.

21 Hibachi chef, two there; in the deposition, two. Both  
22 of them speak Chinese. And in the declaration, June 26, three.  
23 One of them speaks Spanish.

24 Miscellaneous workers: Three in the complaint;  
25 deposition, there's one; declaration, there is two.

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1           Waitstaff: Five in the complaint; two to three, all  
2 females, in deposition; and in declarations are two different  
3 versions, June 26, one says two female waitresses, the other  
4 said three.

5           Receptionist: One in the complaint, not mentioning  
6 afterwards.

7           Packers: One in the complaint, not mentioning  
8 afterwards.

9           Delivery: One in the complaint; in the deposition,  
10 not sure; and there is no mention of deliveries.

11           And the dishwashers: No mention in the complaint of  
12 dishwashers. There's one dishwasher in the deposition, he  
13 claimed, and now in the declaration, there are two dishwashers.

14           Changing room: Not mentioning in the complaint; yes,  
15 there is changing rooms, and he change in and out of uniforms  
16 every day, in his deposition; now in the declaration, there is  
17 no more changing rooms. And he said there are two bathrooms,  
18 like I testified; since starting from the restaurant, there's  
19 four bathrooms there, three available for customers, not two,  
20 but four, and three available for the customers.

21           Also working schedules: He said 11:00 to  
22 10:00 o'clock for four days, 11:00 for two days in the  
23 complaint; and in the deposition, he says 12:00 to  
24 10:00 o'clock, Monday to Thursday, 12:00 to 11:00 o'clock,  
25 Friday to Saturday, and the 1:00 to 10:00 o'clock on Sunday;

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1 and also in declarations, it's all -- again, it's different --  
2 11:00 to 10:00, Monday, Wednesday and Thursday, 11:00 to 11:00,  
3 Friday and Saturday, 11:00 to 10:00 on Sunday.

4 And the van pickup or shuttle pickup: No mention in  
5 the complaint; the deposition says 11:30; and the declaration  
6 says 10:15 or 12:15 on Sundays.

7 Shuttle arrival time: Not mention in the complaint;  
8 in the depositions, at 11:50 to 11:55; and then in the  
9 declaration, it become 10:55 and 12:55 on Sundays.

10 Passengers in the shuttle: Not mention in the  
11 complaint; nine to ten, including the manager, and all  
12 employees other than the manager and the one hibachi chef in  
13 the deposition.

14 There's many, many, many of those inconsistent  
15 testimonies. I don't know what to believe. Plus, he doesn't  
16 even know which one actually is correct in his supporting  
17 affidavit.

18 So, even we take some of his testimony, there is no  
19 mentioning of how waiter/waitresses are paid, how other busboys  
20 are paid. And as he testified today, that there was no  
21 discussion whatsoever with anyone regarding the salary;  
22 however, later on, when his counsel press on, he said, oh, I  
23 talked with this person, he told me this amount, I talk to that  
24 person, he told me that amount. However, in the declarations,  
25 there's no mentioning of the amount. I don't know where the



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1 amount comes from, and I don't know why, all of a sudden, he  
2 remembers the amount.

3 So, that will be my closing.

4 THE COURT: Thank you. I will have to definitely look  
5 at the transcript to get all of that down.

6 I have -- I am going to have to take this under  
7 advisement.

8 I have one more direction before I let you go. Do  
9 both counsel have a copy of the exhibit from Mr. Zhang's  
10 deposition, the one where he drew out the layout of the  
11 restaurant?

12 MR. SCHWEITZER: I do not.

13 MR. LI: I have a copy. I can send a copy to  
14 plaintiff's counsel when I go back to my office.

15 THE COURT: Okay. Who has the original?

16 MR. LI: I have the original.

17 THE COURT: You have the original, also?

18 Please make a copy of the original, submit it to  
19 chambers, and send a copy to Mr. Schweitzer. Do that by the  
20 close of business tomorrow.

21 MR. LI: Okay. So just one question --

22 THE COURT: You know what, I just want you to submit  
23 it -- actually, I would like you to file it on the docket as a  
24 supplemental submission in opposition to your motion -- to  
25 plaintiff's motion for conditional collective certification.

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1 MR. LI: Okay, that's fine. I'll do that today.

2 THE COURT: I want no additional briefing, I want no  
3 argument, just simply submit that as the Court has ordered.  
4 And make sure --

5 MR. LI: Should I submit affirmation, or it's just one  
6 document?

7 THE COURT: An affirmation that it is a true and  
8 correct copy of the original that was drawn by Mr. Zhang at his  
9 deposition.

10 Mr. Schweitzer?

11 MR. SCHWEITZER: I'd also ask that a translated  
12 version be included with that filing since it is written  
13 entirely in Chinese.

14 THE COURT: Well, you can maybe have somebody in  
15 your -- oh, I see, a translation be -- I think I will not need  
16 to put either of you to that cost and expense right now. I am  
17 going to try to understand, from the translated deposition  
18 transcript, the testimony to see if I can figure out what that  
19 means. If I need a translation or if I have particular  
20 questions later, you may hear from me.

21 MR. SCHWEITZER: Okay.

22 MR. LI: Thank you.

23 THE COURT: Thank you very much. We are adjourned.

24 The parties are directed to order the transcript and  
25 share the cost. And I will need a copy. Parties, you should

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1 consider whether to order the transcript on a more expedient  
2 basis because I will not and cannot rule on your motion,  
3 Mr. Schweitzer, until I have a copy of that transcript of  
4 today's transcript. Okay?

5 MR. SCHWEITZER: Yes.

6 THE COURT: Thank you. We are adjourned.

7 (Adjourned)

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